IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 568 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DARSHA C PARDIWALA

Versus

STATE OF GUJARAT

Appearance:

MR NV ANJARIA for Petitioner

MR SAMEER Dave for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner filed this petition under Article 227 of the Constitution of India and challenge is made herein to the order dated 15.10.80 of the Gujarat Revenue Tribunal made in Revision Application No.TEN.B.S.219/79.

2. The facts giving rise to the present petition, in

brief, are as under :

The matter has arisen out of the proceedings initiated under the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as the Act 1960). The petitioner, amongst other agricultural lands, owns land comprising of Survey No.534 admeasuring 6 acres 22 gunthas at village Rohina, Taluka Pardi. The petitioner has entered into an agreement of sale of the said land on 2nd December 1966 in favour of Shri Nariman K. Patel for a consideration of Rs.8,000/- Rs.3,000/- was stated to be paid as earnest money towards the sale consideration and in lieu thereof, the petitioner had put into possession of the land to the alleged purchaser. It is not in dispute that registered sale deed in favour of Shri Nariman Patel was executed in respect of this land by the petitioner on 6th May 1972. The Act 1960 was amended by the Amending Act 1974 which came into force on 1st April 1976 whereby it reduced the ceiling area and the petitioner was thereupon required to make an application u/s.8(2) of the said Act for a declaration that the transfer effected by the petitioner was not made in order to defeat the object of the said Act. The application filed by the petitioner was rejected by the Deputy Collector, Bulsar under the order dated 7.3.77. On revision, the matter has been remanded back to the Dy.Collector, Bulsar, by the Tribunal under its order dated 10th February 1978. The Dy.Collector, under its order dated 30th April 1979, again held that the transfer was made by the petitioner with a view to defeat the purpose of the Act. The matter was taken up by the petitioner in Revision before the Tribunal by filing Revision Application which came to be dismissed vide order dated 15.10.80. The Tribunal has confirmed the order of the competent authority.

3. The learned counsel for the petitioner challenging the order of the Tribunal made twofold submissions. Firstly it is contended that the day on which the petitioner agreed to sale the land in dispute he was not in possession of the land in excess of the ceiling limit and as such, both the authorities below have committed serious illegality in holding that the sale has been effected with the purpose and object to defeat the provisions of the Act 1960 as amended by the Act 1974. In support of this contention, the learned counsel for the petitioner placed reliance on decision of this Court in Special Civil Application No.631 of 1981 decided on 1.8.91. It has next been contended that the Tribunal has committed a serious error of jurisdiction in holding that the petitioner has failed to discharge legal

fiction as created u/s.8 of the Act 1960.

4. On the other hand, the learned counsel for the respondent contended that first ground has been taken by the petitioner for the first time before this Court. The petitioner has not raised this objection either before the competent authority or before revisional authority on the first occasion when the matter was remanded back and on the second occasion also. It has next been contended that even in the original Special Civil Application, this point has been incorporated only after making amendment in Special Civil Application. So far as the second point is concerned, the learned counsel for the respondent contended that the Tribunal has decided on the question of facts and it has confirmed the findings recorded by the competent authority. It is a case where no interference is called for by this Court, with the findings recorded by the authorities below, sitting under Article 227 of the Constitution.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. The agreement to sale was executed on 2.12.66 as per petitioner's case. The learned counsel for the petitioner does not dispute that this agreement to sale was only on a plain paper. The sale consideration agreed in between the parties was of Rs.8,000/- and admittedly only Rs.3,000/- have been paid as earnest money by the alleged purchaser. No time limit has been fixed under the agreement dated 1.12.66 for execution of sale deed as well as for payment of balance amount of consideration. The petitioner has come up with the case that possession of the land was given to the alleged purchaser on 2.12.66, but this conduct of the petitioner appears to be against the person of normal prudence. Substantial amount of sale consideration has not been paid and the petitioner has delivered the possession of of the land in question to the alleged purchaser only on receipt of Rs.3,000/-. This conduct of the petitioner is against the natural human conduct. Normally, possession of the land is given, on agreement to sale, when substantial amount of sale consideration is paid. No explanation is given by the petitioner whatsoever why he had decided to deliver possession though only Rs.3,000/-, as per the case of petitioner, were paid to him by the alleged purchaser against the sale consideration of Rs.8,000/-. This important aspect has been left unexplained by the petitioner. The agreement of sale is also conspicuously silent regarding important conditions of agreement which are normally there in an agreement to sale, for example,

the period within which the alleged purchaser will get the sale deed executed from the petitioner, the balance amount of sale consideration to be paid within certain stipulated period etc., but no such period has been specified. Moreover, the agreement was also executed on a plain paper. No evidence had been produced in support of the fact that possession has been delivered, of the land, to the alleged purchaser by the petitioner on 2.12.66, except mere recital in this respect in agreement to sale which is unregistered document executed by the petitioner. In case possession would have been really handed over by the petitioner of the land in dispute to the purchaser thereof, the same would have been reflected from necessary documents in the form of Village Form No.7/12. Village Form No.7/12 has not been produced to show cultivation on the said land by purchaser from 1966 to 1971. Not only this, the petitioner has not produced any receipts for payment of land revenue. In absence of all these material documents, both the authorities below have not committed any error whatsoever in not believing the document, agreement to sale, dated 2.12.66. After going through the judgments of both the authorities and revisional authority, I am satisfied that it is difficult to accept that possession of the land in question has been given to the purchaser under the agreement dated 2.12.66. Reasons which have been given by the petitioner to enter into said agreement have also rightly been not accepted. The best evidence could have been to show that the applicant was suffering from disease at the relevant time by giving medical certificates, but the petitioner has produced medical certificate of the year 1976 to show that he was not well during that period. The ill health of petitioner in the yearn 1976 has no relevance whatsoever to the year 1966. The petitioner has to establish that he was suffering from such illness or his health was not good to the extent that he was not in a position to manage the land in dispute, in the year 1966. On the contrary, evidence has come on record that the applicant had land in four other villages of Pardi Taluka. When the petitioner was in a position to manage these lands situated at different places, then the ground of illness given by the petitioner otherwise also is difficult to accept. The petitioner, in the present case, has utterly failed to dispel legal fiction as provided u/s.8 of the Act 1960 by producing relevant and material evidence. Both the authorities below have rightly held that the sale of the land in question by the petitioner has been made with a view to defeat the object of the act.

7. The other contention of the learned counsel for

the petitioner that on 2nd December 1966, the petitioner was not in possession of the land in excess of ceiling limit, is devoid of substance. It is purely a question of fact how much land the petitioner was having on 2nd December 1966. This question of fact has to be raised by the petitioner before the competent authority and he should have established it by producing cogent and material evidence. The competent authority was appropriate authority which could have gone into this question of fact. That evidence could have also been recorded. The petitioner has not raised this objection in the first revision application and before the competent authority while the matter was decided and remanded. Not only this, in the second revision application also, this point was not raised. The matter is not ended here, because in this Special Civil Application also, initially, the petitioner has not raised the aforesaid objection. It is true that the petitioner has raised this objection by amending the petition, but he has not produced any evidence in support of the aforesaid contention. The affidavit in support of this writ petition is also to be taken note of. The averments made in the Special Civil Application which include paragraph 6-A has been stated to be solemnly affirmed and true to the best of knowledge and belief. The petitioner has not made affirmation of contents of para A.A. on his personal knowledge. On such affidavit where the petitioner himself is not clear and defined regarding the averments of the facts made therein, it is really dangerous to entertain such plea at a later stage. The conduct of the petitioner not to raise this factual question before the lower authorities is material. Sitting under Article 227 of the Constitution of India, this Court has to consider the legality, propriety and correctness of the order made by the Tribunal. It has to consider whether the Tribunal has committed any error which is apparent on the face of the order or not. Illegality has to be adjudicated with reference to the material produced and the points raised. By raising a new point before this Court under Article 227 of the Constitution of India, it cannot be said that the judgment rendered by the Tribunal is illegal or perverse. The learned counsel for the petitioner has put emphasis on the fact that this Court has decided identical issue and in that case the matter has been remanded. I have gone through the judgment of this Court, being Special Civil Application No.631 of 1981 decided on 1st August 1981 and I am of opinion that the said case is clearly distinguishable on facts. In the aforesaid case, the petitioner therein has made a statement in his application filed u/s.8 of the Act before the competent

authority that he did not possess the land in excess of ceiling area on the date of approval including the lands sought to be transferred thereunder. It is true that in that case also, that point has been taken by making amendment to the petition, but this Court cannot be oblivious of the fact that this point has been raised in the application itself filed by the petitioner in that case before the competent authority. When the point therein has been raised and it has not been considered by both the authorities, then this Court has taken a view that vital fact has been left out from the decision by the competent authority. That is not the case here. The factual ground has been raised at the initial stage but the authorities have not decided the same and as such in that case it was an error committed, but in the present case, this point has not been raised in application u/s.8 of the Act and as such, I find sufficient justification in the contention of the learned counsel for the respondent that this plea should not be allowed to be raised. Otherwise also, as stated earlier, no evidence has been produced in support of this plea of the petitioner before this Court also.

8. Taking into consideration the totality of the facts of the case, I do not find any substance in this Special Civil Application and the same is dismissed with costs of Rs.1,000/-. Rule discharged.

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(sunil)